



MICHIGAN
HOUSE OF REPRESENTATIVES
P.O. Box 30014
LANSING, MICHIGAN 48909-7514

Minutes of the House Standing Committee
On
Oversight and Ethics

Thursday, December 10, 2015

10:30 a.m.

Room 326 House Office Building

The House Standing Committee on Oversight and Ethics was called to order by Representative Ed McBroom, Chair.

The Clerk called the roll; members present were **Representatives McBroom, Howrylak, Graves, Theis, Robinson, and Pagan. (6/6)**

The Clerk announced that a quorum was present.

At 10:36 a.m., the Chair went at ease at the call of the Chair.

At 10:37 a.m., the Chair reconvened.

The Chair laid before the committee the minutes of October 22, 2015 as printed.

Representative Theis moved to adopt the minutes of October 22, 2015 as printed.

There being no objection the motion prevailed by unanimous consent of the members present; the minutes were adopted as printed.

The Chair laid before the committee House Bill 4540.

HB 4540 (Heise)

Civil rights; public records; public body records, documents, or information disclosable under freedom of information act; exempt critical energy infrastructure and cybersecurity-related information

Representative Heise, the bill sponsor, explained the substitute (H-6) for House Bill 4540, and answered members' questions. A copy of Representative Heise's handout is attached.

Charlotte Jameson, Policy Manager Assistant for the Michigan League of Conservation Voters, testified in opposition to the bill. Questions and discussion followed. A copy of her written testimony is attached.

James Clift, Policy Director at the Michigan Environmental Council, testified in opposition to the bill. Questions and discussion followed.

Mariah Urueta, Michigan Organizer for Food and Water Watch, testified in opposition to the bill. Questions followed.

The following individuals submitted testimony in support of the bill, but did not wish to speak:

Inspector Matt Bolger, Assistant Division Commander in the Intelligence Division of the Michigan State Police, and

John Griffin, Executive Director of the American Petroleum Institute.

The following individuals submitted testimony in opposition to the bill, but did not wish to speak:

Lisa McGraw, Public Affairs Manager for the Michigan Press Association:

Mike Shriberg, PH.D, Regional Executive Director of the Great Lakes Regional Center for the National Wildlife Federation, and

Mike Berkowitz, Legislative and Political Director of the Sierra Club of Michigan.

Mike Byrne, Legislative Liaison for the Michigan Agency for Energy in the Michigan Department of Environmental Quality, explained the department is neutral on the legislation.

The Chair offered the substitute (H-6) for House Bill 4540.

Representative Graves moved to adopt the substitute (H-6) for House Bill 4540.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives McBroom, Howrylak, Graves, Theis, and Pagan, (5/6)

Nays: Representative Robinson. (1/6)

The substitute was adopted.

Representative Graves offered, explained, and moved to adopt the following amendment to House Bill 4540 (H-6):

1. Amend page 2, line 9, after “SAFETY” by inserting “OR ENVIRONMENTAL”.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives McBroom, Howrylak, Graves, Theis, and Pagan, (5/6)

Nays: Representative Robinson. (1/6)

The amendment was adopted.

The Chair offered, explained, and moved to adopt the following amendments to House Bill 4540 (H-6):

1 Amend page 16, line 11, after “WITH” by striking out “THE COURT OF CLAIMS, and inserting “THE CIRCUIT COURT”.

2 Amend page 16, line 12, after “CLAIMS.” by striking out “THE COURT OF CLAIMS HAS EXCLUSIVE JURISDICTION TO DECIDE THE APPEAL OF THE DECISION.”.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives McBroom, Howrylak, Graves, Theis, Robinson, and Pagan, (6/6)

Nays: None. (0/6)

The amendments were adopted.

Representative Pagan offered, explained, and moved to adopt the following amendment to House Bill 4540 (H-6):

1. Amend page 16, following line 15, by inserting:

"Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 98th Legislature are enacted into law:

- (a) House Bill No. 4511.
- (b) House Bill No. 4512.
- (c) House Bill No. 4513.
- (d) House Bill No. 4514."

The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives Howrylak, Robinson, and Pagan, (3/6)

Nays: Representative McBroom, Graves, and Theis. (3/6)

The amendment was not adopted.

Representative Howrylak offered, explained, and moved to adopt the following amendment to House Bill 4540 (H-6):

1. Amend page 2, line 8, by striking out all of subparagraph (iv) and inserting:

"(iv) PROVIDES MORE SPECIFIC INFORMATION THAN CAN GENERALLY BE INFERRED BASED ON GENERAL AND BASIC ENGINEERING PRINCIPLES.

(v) HAS BEEN DESIGNATED CRITICAL ENERGY INFRASTRUCTURE INFORMATION BY THE PERSON SUBMITTING THE INFORMATION TO A PUBLIC BODY AND DETERMINED BY THE PUBLIC BODY PURSUANT TO SECTION 13A(2) TO BE CRITICAL ENERGY INFRASTRUCTURE INFORMATION.

(vi) IS NOT A DOCUMENT CREATED BY A GOVERNMENT BODY RELATING TO A UTILITY'S COMPLIANCE WITH SAFETY OR ENVIRONMENTAL REQUIREMENTS IN THE OPERATION OF A CRUDE OIL, PETROLEUM, ELECTRIC, OR NATURAL GAS FACILITY.

(vii) IS NOT CUSTOMARILY IN THE PUBLIC DOMAIN AND IF MADE PUBLIC WOULD SIGNIFICANTLY INCREASE THE ABILITY OF A PERSON INTENDING HARM TO CRITICAL INFRASTRUCTURE TO CAUSE ANY OF THE FOLLOWING:

(A) ACTUAL, POTENTIAL, OR THREATENED INTERFERENCE WITH, ATTACK ON, COMPROMISE OF, OR INCAPACITATION OF CRITICAL INFRASTRUCTURE OR PROTECTED SYSTEMS BY EITHER PHYSICAL OR COMPUTER-BASED ATTACK OR OTHER SIMILAR CONDUCT, INCLUDING THE MISUSE OF OR UNAUTHORIZED ACCESS TO ALL TYPES OF COMMUNICATIONS AND DATA TRANSMISSION SYSTEMS.

(B) A VIOLATION OF FEDERAL, STATE, OR LOCAL LAW.

(C) INTERFERENCE WITH INTERSTATE COMMERCE.

(D) AN ACTUAL OR POTENTIAL THREAT TO PUBLIC HEALTH OR SAFETY.

(E) A DECREASE IN OR COMPROMISE OF THE ABILITY OF ANY CRITICAL INFRASTRUCTURE OR PROTECTED SYSTEM TO RESIST INTERFERENCE OR INCAPACITATION OF ITS FUNCTION, INCLUDING INFORMATION CONCERNING ANY PLANNED OR PAST ASSESSMENT, PROJECTION, OR ESTIMATE OF THE VULNERABILITY OF CRITICAL INFRASTRUCTURE; INFORMATION CONCERNING SECURITY TESTING, RISK EVALUATION BASED ON SECURITY TESTING, RISK MANAGEMENT PLANNING, AND RISK AUDIT; AND INFORMATION CONCERNING ANY PLANNED OR PAST OPERATIONAL PROBLEM OR SOLUTION REGARDING CRITICAL INFRASTRUCTURE, SUCH AS REPAIR, RECOVERY, RECONSTRUCTION, INSURANCE COVERAGE, OR CONTINUITY OF OPERATIONS."

The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives Howrylak, Robinson, and Pagan, (3/6)

Nays: Representative McBroom, Graves, and Theis. (3/6)

The amendment was not adopted.

Representative Howrylak offered, explained, and moved to adopt the following amendment to House Bill 4540 (H-6):

1. Amend page 12, line 21, by striking out all of subdivision (Z) and inserting:
"~~(Z)~~ EXCEPT AS PROVIDED IN SECTION 13A AND UNLESS THE PUBLIC INTEREST IN DISCLOSURE OUTWEIGHS THE PUBLIC INTEREST IN NONDISCLOSURE OF THE PARTICULAR INFORMATION, A RECORD OR INFORMATION THAT DISCLOSES CRITICAL ENERGY INFRASTRUCTURE INFORMATION."

The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives Howrylak, Robinson, and Pagan, (3/6)

Nays: Representative McBroom, Graves, and Theis. (3/6)

The amendment was not adopted.

Representative Howrylak offered, explained, and moved to adopt the following amendment to House Bill 4540 (H-6):

1. Amend page 16, following line 13, by inserting:
"SEC. 13A. (1) A PERSON REQUESTING THAT MATERIAL SUBMITTED TO A GOVERNMENTAL BODY BE TREATED AS CRITICAL ENERGY INFRASTRUCTURE INFORMATION MUST DO ALL OF THE FOLLOWING:
(A) INCLUDE IN ITS FILING A JUSTIFICATION FOR THAT TREATMENT.
(B) CLEARLY DESIGNATE THE DOCUMENT AS CRITICAL ENERGY INFRASTRUCTURE INFORMATION BY LABELING THE COVER PAGE AND PAGES OR PORTIONS OF THE DOCUMENT CONTAINING MATERIAL FOR WHICH THE EXEMPTION IS CLAIMED IN BOLDFACED, CAPITAL LETTERING, INDICATING THAT IT CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION AND THE WORDS "DO NOT RELEASE".
(C) SUBMIT A PUBLIC VERSION OF THE DOCUMENTS WITH THE INFORMATION THAT IS CLAIMED TO BE CRITICAL ENERGY INFRASTRUCTURE INFORMATION REDACTED, TO THE EXTENT PRACTICABLE.
(2) A PUBLIC BODY SHALL REVIEW THE DESIGNATION OF ANY INFORMATION AS CRITICAL ENERGY INFRASTRUCTURE IN DOCUMENTS IT RECEIVES. IF IT DISAGREES WITH THE DESIGNATION OF INFORMATION AS CRITICAL ENERGY INFRASTRUCTURE, THE DESIGNATION SHALL BE STRICKEN AND THAT INFORMATION SHALL NOT BE TREATED AS CRITICAL ENERGY INFRASTRUCTURE INFORMATION FOR PURPOSES OF THIS ACT.
(3) IF A PUBLIC BODY RECEIVES A REQUEST FOR INFORMATION THAT INCLUDES DOCUMENTS THAT HAVE BEEN LABELED "DO NOT RELEASE" BECAUSE THEY CONTAIN CRITICAL ENERGY INFRASTRUCTURE INFORMATION, WITHIN THE TIME DESIGNATED TO REPLY TO A REQUEST FOR INFORMATION, THE PUBLIC BODY SHALL DO ALL OF THE FOLLOWING:
(A) RELEASE THE PUBLIC VERSION OF THE REQUESTED DOCUMENTS.
(B) IDENTIFY AND LIST THOSE DOCUMENTS THAT HAVE BEEN LABELED "DO NOT RELEASE".
(C) INFORM THE REQUESTER THAT TO PURSUE RELEASE OF THE NONPUBLIC INFORMATION, THE REQUESTER MAY APPEAL TO THE PUBLIC BODY, THE MICHIGAN PUBLIC SERVICE COMMISSION, OR THE CIRCUIT COURT."

(D) PROVIDE THE REQUESTER WITH CONTACT INFORMATION FOR THE MICHIGAN PUBLIC SERVICE COMMISSION.

(E) FORWARD BOTH VERSIONS OF THE REQUESTED DOCUMENTS TO THE MICHIGAN PUBLIC SERVICE COMMISSION.

(4) AN EMPLOYEE OF A STATE AGENCY ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT MAY OBTAIN CRITICAL ENERGY INFRASTRUCTURE INFORMATION WITHOUT FILING A REQUEST UNDER THIS ACT.

(5) NOTWITHSTANDING THE EXEMPTION UNDER SECTION 13(1)(Z), A LOCAL PUBLIC BODY SHALL PROVIDE A PERSON WHO OWNS PROPERTY THAT IS OR IS PROPOSED TO BE CROSSED BY, THAT SHARES A BOUNDARY WITH, OR THAT IS WITHIN 1/2 MILE OF, A PROJECT THAT INCLUDES CRITICAL ENERGY INFRASTRUCTURE WITH ACCESS TO REQUESTED CRITICAL ENERGY INFRASTRUCTURE INFORMATION ON THE SAME TERMS REQUIRED UNDER THIS ACT FOR NONEXEMPT INFORMATION. TO RECEIVE INFORMATION AS PROVIDED IN THIS SUBSECTION, THE LANDOWNER MUST PROVIDE PROOF OF HIS OR HER PROPERTY INTEREST WITH THE REQUEST FOR THE INFORMATION.

(6) IF A REQUESTER OTHER THAN A LANDOWNER DESCRIBED IN SUBSECTION (5) REQUESTS INFORMATION DESIGNATED AS CRITICAL ENERGY INFRASTRUCTURE INFORMATION, UPON APPEAL AND SUBJECT TO SUBSECTION (7), THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION MAY RELEASE THE INFORMATION IF THE REQUESTER COMPLIES WITH ALL OF THE FOLLOWING:

(A) FILES A SIGNED, WRITTEN APPEAL WITH THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION CONTAINING ALL OF THE FOLLOWING:

(i) THE REQUESTER'S NAME, INCLUDING ANY OTHER NAME THAT THE REQUESTER HAS USED AND THE DATES THE REQUESTER USED THE NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER.

(ii) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE PERSON OR ENTITY ON WHOSE BEHALF THE INFORMATION IS REQUESTED.

(iii) A DETAILED STATEMENT EXPLAINING THE PARTICULAR NEED FOR AND INTENDED USE OF THE INFORMATION.

(iv) IF THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION REQUESTS, THE REQUESTER SHALL PROVIDE HIS OR HER DATE AND PLACE OF BIRTH.

(B) IF THE PERSON FILING THE APPEAL SEEKS THE INFORMATION ON BEHALF OF ALL EMPLOYEES OF AN ORGANIZATION, THE APPEAL MUST INCLUDE ALL OF THE FOLLOWING:

(i) A STATEMENT THAT THE INFORMATION IS SOUGHT FOR THE ORGANIZATION.

(ii) AN INDICATION THAT THE REQUESTER IS AUTHORIZED TO SEEK THE INFORMATION ON BEHALF OF THE ORGANIZATION.

(iii) BEFORE RELEASE OF THE CRITICAL ENERGY INFRASTRUCTURE INFORMATION, A STATEMENT SIGNED BY ALL THE INDIVIDUALS WHO WILL HAVE ACCESS TO THE REQUESTED CRITICAL ENERGY INFRASTRUCTURE INFORMATION STATING THAT THEY AGREE TO BE BOUND BY A NONDISCLOSURE AGREEMENT.

(7) AFTER THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION RECEIVES AN APPEAL FROM A DENIAL OF A REQUEST SUBMITTED UNDER SUBSECTION (5) OR (6), IT SHALL DO THE FOLLOWING:

(A) DETERMINE WHETHER THE INFORMATION IS PROPERLY DESIGNATED CRITICAL ENERGY INFRASTRUCTURE INFORMATION SUBJECT TO THE EXEMPTION. IT SHALL RELEASE ANY INFORMATION THAT HAS NOT BEEN PROPERLY DESIGNATED AS CRITICAL ENERGY INFRASTRUCTURE INFORMATION.

(B) IF THE INFORMATION IS PROPERLY DESIGNATED, INVESTIGATE THE REQUESTER TO DETERMINE WHETHER THERE IS ANY REASON TO BELIEVE THAT THE INDIVIDUAL IS A SECURITY RISK.

(C) IF THE INFORMATION IS PROPERLY DESIGNATED AND THE REQUESTER IS NOT FOUND TO POSE A SECURITY RISK, BALANCE THE REQUESTER'S REASONS FOR REQUESTING THE INFORMATION AGAINST THE SENSITIVITY OF THE INFORMATION WITH RESPECT TO PUBLIC SAFETY AND MAKE A DETERMINATION

CONSISTENT WITH THE PURPOSES OF THIS ACT. IF THE BALANCING RESULTS IN A FINDING THAT THE REQUESTER MAY RECEIVE SOME OR ALL OF THE INFORMATION, THE PUBLIC BODY OR MICHIGAN PUBLIC SERVICE COMMISSION SHALL DETERMINE WHETHER ANY CONDITIONS ON THE RELEASE OF THE INFORMATION ARE NEEDED TO PROTECT THE PUBLIC SECURITY, HEALTH, OR SAFETY. IF NO ADDITIONAL CONDITIONS ARE NEEDED, THE PUBLIC BODY OR MICHIGAN PUBLIC SERVICE COMMISSION SHALL RELEASE THE INFORMATION.

(D) NOTIFY THE REQUESTER OF ANY ADDITIONAL CONDITIONS DETERMINED TO BE NEEDED UNDER SUBDIVISION (C) THAT THE REQUESTER MUST AGREE TO BEFORE THE REQUESTED INFORMATION WILL BE RELEASED. UPON RECEIPT OF THE REQUESTING WRITTEN AGREEMENT TO THE CONDITIONS, THE PUBLIC BODY OR MICHIGAN PUBLIC SERVICE COMMISSION SHALL RELEASE THE INFORMATION.

(8) IF AN ORGANIZATION IS GRANTED ACCESS TO CRITICAL ENERGY INFRASTRUCTURE INFORMATION UNDER SUBSECTION (7) AND SEEKS TO ADD ADDITIONAL INDIVIDUALS TO THE NONDISCLOSURE AGREEMENT, THE NAMES OF THE INDIVIDUALS MUST BE SENT TO THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION, AS APPLICABLE, WITH CERTIFICATION THAT NOTICE OF THE PROPOSED ADDITION OF THE INDIVIDUALS HAS ALSO BEEN GIVEN TO THE ORIGINAL REQUESTER. ANY ADDED INDIVIDUALS MUST SIGN A SUPPLEMENT TO THE ORIGINAL NONDISCLOSURE AGREEMENT INDICATING THEIR ACCEPTANCE OF ITS TERMS. IF THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION DOES NOT RECEIVE WRITTEN OPPOSITION WITHIN 5 DAYS AFTER NOTIFYING THE ORIGINAL REQUESTER OF THE ADDITION OF INDIVIDUALS TO THOSE WHO ARE PERMITTED ACCESS TO THE DISCLOSED CRITICAL ENERGY INFRASTRUCTURE INFORMATION, IT SHALL NOTIFY THE ORGANIZATION AND THE ORIGINAL REQUESTER THAT PERMISSION TO ADD THE INDIVIDUALS IS APPROVED. IF THE REQUESTER FILES TIMELY WRITTEN OPPOSITION, THE PUBLIC BODY OR MICHIGAN PUBLIC SERVICE COMMISSION, AS APPLICABLE, SHALL ISSUE A FORMAL DETERMINATION ADDRESSING THE MERITS OF THE OPPOSITION.

(9) THE TIMES FOR THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION TO RESPOND TO AN APPEAL UNDER THIS SECTION ARE AS FOLLOWS:

(A) EXCEPT AS PROVIDED IN SUBDIVISION (B), THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION SHALL NOTIFY THE REQUESTER WITHIN 5 DAYS AFTER RECEIPT OF THE APPEAL OF THE DETERMINATION AS TO WHETHER THE APPEAL IS GRANTED OR DENIED. IF THE APPEAL IS DENIED, THE NOTICE SHALL INCLUDE A STATEMENT THAT THE DECISION MAY BE APPEALED TO THE CIRCUIT COURT, AS PROVIDED IN SECTION 10. IF THE APPEAL IS GRANTED, THE NOTIFICATION SHALL INCLUDE A NONDISCLOSURE AGREEMENT THAT INCLUDES ANY OTHER CONDITIONS THAT HAVE BEEN PLACED ON THE RELEASE FOR SIGNATURE AND RETURN. THE REQUESTED INFORMATION SHALL BE MADE AVAILABLE OR PROVIDED TO THE REQUESTER WITHIN 5 DAYS AFTER THE DATE THE PUBLIC BODY OR THE MICHIGAN PUBLIC SERVICE COMMISSION RECEIVES THE RETURNED, SIGNED NONDISCLOSURE AGREEMENT, INCLUDING AGREEMENT TO ANY ADDITIONAL REQUIRED CONDITIONS.

(B) THE TIME REQUIREMENTS IN SUBDIVISION (A) MAY BE EXTENDED FOR NOT MORE THAN 10 DAYS UNDER THE SAME CONDITIONS PROVIDED FOR RESPONDING TO A REQUEST IN SECTION 5(2)(D).

(10) THE MICHIGAN PUBLIC SERVICE COMMISSION MAY DELEGATE ITS DUTIES UNDER THIS SECTION TO 1 OR MORE EMPLOYEES WITHIN THE MICHIGAN PUBLIC SERVICE COMMISSION."

The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives Howrylak, Robinson, and Pagan, (3/6)

Nays: Representative McBroom, Graves, and Theis. (3/6)

The amendment was not adopted.

Representative Howrylak offered and moved to adopt the substitute (H-4) for House Bill 4540. The motion did not prevail by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives Howrylak, Robinson, and Pagan, (3/6)

Nays: Representative McBroom, Graves, and Theis. (3/6)

The substitute was not adopted.

Representative Graves moved to report House Bill 4540 with the recommendation that the substitute (H-6) as amended, as substitute (H-8), be adopted and that the bill then pass, and that the bill and substitute be referred to the Committee on Natural Resources.

The motion prevailed by an affirmative vote of a majority of the members appointed to and serving on the committee, voting as follows:

Yeas: Representatives McBroom, Howrylak, Graves, and Theis, (4/6)

Nays: Representatives Robinson and Pagan. (2/6)

The bill and substitute were referred to the full House.

There being no other business before the committee; **Representative Graves moved to adjourn the meeting.**

The motion prevailed, the time being 12:00 Noon.

The Chair declared the Committee adjourned.

Ed McBroom, Chair
House Standing Committee on Oversight and Ethics

Joy Brewer, Committee Clerk

Date approved by the committee